

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL No.1468 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 03/09/2004 in WP No.13049 of 2004 on the file of the High Court.)

Between:

Mohd.Azim Kham, s/o Ahmadulla Khan,
R/o Jalalpur Village, Varni Mandal,
Nizamabad District.

..... APPELLANT

AND

- 1 Government of Andhra Pradesh, represented by its Principal Secretary,
Minority Welfare Department, Secretariat Buildings, Hyderabad.
- 2 A.P.State Wakf Board, Haj House, Public Garden Road, Hyderabad,
rep., by its Chief Executive Officer
- 3 Aijaz Khan, s/o Aishan Khan,
R/o Jalalpur Village, Varni Mandal, Nizamabad District.

.....RESPONDENTS

Counsel for the Appellant: Mr.A.RAMNARAYANA

Counsel for the Respondent No.1: G.P. for Minorties

Counsel for the Respondent No.2: Mr. A.M.Qureshi

Counsel for the Respondent No.3: Mr. Syed Shareef Ahmed

The Court made the following :

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ORAL JUDGMENT : (per **THE HON'BLE THE CHIEF JUSTICE**)

Challenge by the appellant-writ petitioner is to the order passed by the learned single Judge dismissing the writ petition. Appellant-petitioner filed the writ petition seeking a Writ of Mandamus to declare the action of 2nd respondent in not conducting the public auction as per auction notice dated 1-7-2004. On 26-7-2004, Writ Petition came up before the learned single Judge. On that day, learned standing counsel for the 2nd respondent stated that the 3rd respondent, who is the auction purchaser for the previous term, was not being continued after expiry of the period of contract and that the Wakf Board was collecting the offerings of Dargah. Thereafter, the writ petition underwent several adjournments and ultimately it was dismissed by the order impugned in this appeal.

Facts, which transpired after filing of the writ petition are that the representation of the 3rd respondent to continue him for the year 2004-05 was considered by the Wakf Board and extension was granted subject to clearance of all old arrears, which

amounted to Rs.16,13,500/- and payment of 5% enhanced rent over the last year's rent and accordingly issued the Memo dated 4-8-2004. Learned single Judge by taking note of these facts and on the parameters laid down by the Supreme Court in **TATA CELLULAR v. UNION OF INDIA** held that it was not a fit case for interference, since there is nothing wrong in the action of the respondent-Board, who have thought it fit to extend the period of lease by one year, subject to condition of the 3rd respondent clearing the arrears and paying the enhanced rent. Petitioner is nobody else except the intending purchaser, who has no right to insist upon auction being conducted when the decision was taken by the respondent-Board not to conduct the auction.

Learned counsel for the appellant urged before us that the act of the 2nd respondent-Board was contumacious and they cannot be permitted to take advantage of the said contumacious act.

We have taken note of the fact that no third party rights have been created pending the writ petition and no such undertaking was given by the respondent-Board. The only statement made by the 2nd respondent before this Court was that after expiry of lease period, 3rd respondent was not collecting the offerings etc., but it was only collecting the offerings. As such, we do not find any illegality in the action of the respondents in extending the lease in favour of the 3rd respondent and do not find any substance in the appeal.

Accordingly, the Writ Appeal is dismissed with a direction that on expiry of the extended period of lease, the 2nd respondent shall not further extend the lease of the 3rd respondent and conduct public auction thereafter.

(DEVINDER GUPTA, CJ)

30th September,2004

(C.V. RAMULU,J)

prk

DEPUTY REGISTRAR

/True copy/

SECTION OFFICER

To

1 The Principal Secretary, Minority Welfare Department, Government of

Andhra Pradesh, Secretariat Buildings, Hyderabad.

2 The Chief Executive Officer, A.P.State Wakf Board, Haj House, Public

Garden Road, Hyderabad,

3 G.P. for Minorities, High Court Buildings, Hyderabad (OUT)

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